IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10021 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHAGANBHAI GOVINDBHAI MEVADA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10021 of 2001

MR IS SUPEHIA for Petitioner No. 1

Mr.Dabhi, AGP for Respondent No. 1

MR RA MISHRA for Respondent No. 2

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 29/01/2003

ORAL JUDGEMENT

The facts of the case are that the petitioner had applied for appointment on compassionate grounds, i.e. on the ground that the mother of the petitioner was

working as peon in Primary Govt School at Una. It is the case of the petitioner that his mother expired on 13.4.92. Thereafter, on 6.5.92 the petitioner made a request for appointment on compassionate grounds. As per the letter, dated 7.6.97 the application of the petitioner for appointment on compassionate grounds is rejected on the ground that the total income of the family is beyond the prescribed limit. Mr.Supehia, Ld.advocate for the petitioner submitted that as per various judgments delivered by other coordinate benches of this court as well as this court including SCA No.10587/02 that while calculating the income of the family for considering the case for appointment on compassionate ground the income of the family pension is required to be excluded.

2. On behalf of the respondents no affidavit in reply is filed. However, Mr.Dabhi, Ld.AGP, on the basis of parawise comments, has stated before the court that the total income of the family is found as Rs.2,258/-p.m. comprising of Rs.714/-p.m. as the income of pension and Rs.769/-p.m. income of pension of the husband of the deceased, Rs.400/-p.m. as income of the elder brother of the petitioner and Rs.375/-p.m. as the income of the petitioner herein. Therefore, it has been submitted that since the income of the family of the deceased employee exceeds Rs.1,500/-p.m. the application has been rejected.

3. In my view, the case involved in this petition is squarely covered by the decision of this court in SCA9835/02 as well as decision dated 22.1.03 in SCA No.10587/02 whereby the view taken is that while calculating the income of the family for the purpose of considering application for appointment on compassionate grounds the income of family pension is required to be excluded. Applying the same criteria, if out of the total amount of Rs.2,258/-p.m. the income of pension comprising of Rs.714/-pm and 769/-pm are excluded as they are the income of family pension as a consequence thereof the income of the family of the deceased will go beyond the prescribed limit of Rs.1,500/-pm and therefore the decision of the authority rejecting the application on the ground that the income exceeds Rs.1,500/-pm is illegal and deserves to be quashed and set aside.

4. At this stage, Mr.Dabhi, Ld.AGP submitted that even otherwise also the petitioner would not be entitled

to appointment on compassionate ground keeping in view various other incomes of the family of the petitioner and also in view of the time limit provided for the purpose of offering appointment on compassionate grounds. I am not expressing any opinion on the said aspect and it will be for the authority to decide the other aspects in accordance with law.

5. In view of the aforesaid discussion, the impugned order rejecting the application of the petitioner for appointment on compassionate grounds on the ground that the income of the family of the deceased employee exceeds Rs.1,500/-pm is quashed and set aside. The respondents are directed to consider the application of the petitioner by excluding the income of the family pension and shall decide the application in accordance with law within a period of three months from the date of receipt of writ of this court. The petition is allowed accordingly. Rule is made absolute accordingly. There shall be no order as to costs.

29.1.03 (JAYANT PATEL,J)